

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

WILLIE JOE RHODES, SR.,

Debtor.

B/K Case No. 02-00778-W

Chapter 11

FILED  
02 SEP 30 04:10:30

**TO: All Creditors and Parties in Interest**

**NOTICE AND APPLICATION FOR SALE OF PROPERTY  
FREE AND CLEAR OF LIENS AND DISPUTED INTEREST**

YOU ARE HEREBY NOTIFIED that the Debtor in this case is applying for approval to sell the property of its estate described below free and clear of liens, judgments and other encumbrances according to the terms and conditions stated below.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Clerk of the Bankruptcy Court no later than 20 days from service of the motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **October 31, 2002 at 1:30 p.m.** in the United States Bankruptcy Court, 145 King Street, Room 225, Charleston, South Carolina. No further notice of this hearing will be given.

TYPE OF SALE: Private Sale

PROPERTY TO BE SOLD: 1836 Meeting Street Road, Charleston, SC (TMS# 464-02-00-071)

**NOTICE: THE DEBTOR IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE DEBTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.**

**THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.**

PRICE: \$157,000 (cash or certified funds), plus an agreement to allow the debtor to continue

114/115

to use the property rent free for 12 months; plus paying up to an additional \$10,000 of the debtor's closing and other costs to allow the sale to be consummated.

APPRAISAL VALUE: \$225,000 per Debtor's realtor. If property is not sold, by the Debtor, a foreclosure is set for November 12, 2002.

NAME OF BUYER: James Lee and Jacquelyn Heyward and/or their assigns

(The Buyers do not have any known adverse interest to this case or any parties involved in the case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyers are not related to the Debtor and are not creditors of the Debtor, and are good faith purchasers for value pursuant to 11 U.S.C. §363(m).)

PLACE, DATE AND TIME OF SALE: The sale shall take place as soon as possible after final Bankruptcy Court approval at a date, place and time to be agreed upon by the parties, but in no event later than November 11, 2002.

SALES AGENT/AUCTIONEER/BROKER/ETC.: NONE

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER/ETC.: Not applicable although had sale been conducted through a realtor, the real estate commission would have been \$15,700 which equals 10% of the purchase price.

EXPENSES OF SALE: Normal seller's closing costs estimated to be 1% of the gross sales price, plus pro-rated real property taxes. The Buyers agree to pay up to \$10,000 towards these closing costs and other fees and charges.

LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING PROPERTY: The sale is free and clear of all liens, judgments, encumbrances and other disputed interests. There is a valid first mortgage lien held against this real property by Charleston Capital Corporation which is owed approximately \$147,000, plus accrued interest to the date of closing. The principal and interest shall be paid in full at closing. The property shall be sold free and clear of this mortgage, with the lien, if any, comprised of any other fees, costs or other charges which may be owing, attaching to the "net proceeds" as defined herein. These fees, costs and other charges may be paid pursuant to a subsequent agreement between the parties or further Order of the Court. Charleston County real property taxes are a lien against this real property, which will be pro-rated through closing, in an amount to be determined. After payment of normal sellers closing costs, including pro-rated real property taxes and deed stamps, any remaining sale proceeds shall be considered the "Net Sale Proceeds".

There are numerous other liens, judgments and encumbrances against the subject property, including, but not limited to the S.C. Department of Revenue; the S.C. Employment Security Commission; Union Bank & Trust; Mitchell Distributing Co.; Robert O. Collins Company, Inc.; and Bohicket Construction, Inc. The Debtor has filed an adversary proceeding seeking to have this Court determine the validity, extent and priority of liens, determining that to the extent the liens exceed the value of the real property they are unsecured pursuant to 11 U.S.C. §506; and avoiding improper post-petition liens pursuant to 11 U.S.C. §549. The Plaintiff disputes the validity of these liens. The sale of this real property shall be free and clear of

all disputed liens, judgements, encumbrances or other interests. They shall attach to the Net Sale Proceeds, as defined herein subject to the mortgage lien of Charleston Capital Corporation, until the further Order of the Bankruptcy Court or other court of competent jurisdiction.

DEBTOR'S EXEMPTION: N/A

PROCEEDS ESTIMATED TO BE PAID TO ESTATE: \$0.00

USE OF PROCEEDS: The Net Sale Proceeds shall be placed in the Debtor in Possession Account and used to pay approved administration expenses; or as otherwise ordered by this Court.

**In the event the Purchaser named herein is not the ultimate purchaser of the subject real property, but has removed all contingencies including the financing contingency as provided for in the underlying real estate contract, the Purchaser shall be allowed to file an administrative priority expense claim for reasonable costs associated with the purchase of the property, including costs of inspection and loan application fees. This claim will be paid pursuant to the terms of the Debtor's confirmed plan.**

Applicant is informed and believes that it would be in the best interest of the estate to sell said property by private sale. Applicant also believes that the funds to be recovered for the estate from the sale of said property justify its sale and the filing of this application.

The Court may consider additional offers at any hearing held on this notice and application for sale. The Court may order at the hearing that the property be sold to another party on equivalent or more favorable terms.

Applicant requests that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Debtor be allowed to immediately enforce and implement the terms of said Order.

The Debtor may seek appropriate sanctions or other similar relief against any party filing a spurious objection to this notice and application.

WHEREFORE, applicant requests the court issue an order authorizing sale of said property and such other and further relief as may be proper.

CAMPBELL LAW FIRM, P.A.

\_\_\_\_\_  
KEVIN CAMPBELL  
Attorney for Debtor  
Post Office Box 684  
Mt. Pleasant, SC 29465  
(843) 884-6874/884-0997(fax)  
District Court ID No. 30

Dated this 21 day of September, 2002.